

ORDINANCE NO. 07- 1474

**AN ORDINANCE OF THE TOWN COMMISSION OF
THE TOWN OF SURFSIDE, FLORIDA ADOPTING
A CODE OF ETHICS; PROVIDING FOR
SEVERABILITY; PROVIDING FOR INCLUSION IN
THE CODE; PROVIDING FOR CONFLICTS; AND
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, in the interest of the Town and the public trust, public officials and employees of the Town should observe certain ethical standards; and

WHEREAS, codifying ethical standards helps to avoid confusion by setting forth clear standards of conduct; and

WHEREAS, the ethical standards set forth herein are the minimum ethical standards and every public official and employee, is encouraged to realize the highest ethical standard when working for the Town.

THE COMMISSION OF THE TOWN OF SURFSIDE HEREBY ORDAINS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Code of Ethics. The Town's Code of Ethics is hereby created and adopted to provide as follows:

Sec. 2-149 Code of Ethics.

(a) Our government is a representative democracy. Those who are elected, appointed, hired, volunteer or campaign to serve the public as representatives accept a public trust. The public entrusts its powers and resources to its servants to use only in the public interest. Public trust requires public servants to fulfill their public duties faithfully and honestly, and to subordinate any personal interest, which conflicts with the public interest. The Town adopts the following ordinance to provide for specific guidelines for minimum ethical standards for public servants, officials and employees.

(b) It is the policy of the Town that no officer or employee of the Town shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his or her duties in the public interest. To implement this policy and strengthen the faith and confidence of the Town's residents in their government, the Town will enact a Code of Ethics setting forth standards of conduct required of the Town's public officers and employees, in the performance of their official duties. It is the intent of the Town that this code shall serve as a guide for the official conduct of the public officers and employees of the Town. For the purposes of this ordinance the Term "officer" and "public officer" shall include the Town Commission and all appointed Town board and committee members.

Sec. 2-150. Code of Ethics Generally.

The conduct of the officers and employees of the Town shall be governed by the Code of Ethics of the Town, which shall include:

(1) The State "Code of Ethics for Public Officers and Employees", codified in F.S. ch. 112, as may be amended from time to time; and

(2) The "Miami-Dade County Conflict of Interest And Code of Ethics Ordinance," codified at section 2-11.1 et. seq., Miami-Dade County Code, as may be amended from time to time; and

(3) Any provisions that the Town Commission may adopt from time to time in addition to those set forth in subsections (1) and (2) above.

Sec. 2-151. Penalty.

The Ethics Commission created pursuant to Miami-Dade County Ordinance 97-105 shall have primary jurisdiction for enforcement of this code of ethics.

Sec. 2-152. Gifts.

(a) *Gift defined.* The term "gift" means the transfer of anything of economic value, whether in the form of money, service, loan, travel, entertainment, hospitality, item or promise, or in any other form, without adequate and lawful consideration.

(b) *Exceptions.* The provisions of subsection (a) of this section shall not apply to:

- (1) Political contributions specifically authorized by state law;
 - (2) Gifts from relatives or members of one's household, unless the person is a conduit on behalf of a third party to the delivery of a gift that is prohibited under subsection (c) of this section;
 - (3) Awards for professional or civic achievement but only if the value of said awards is less than \$500;
 - (4) Material such as books, reports, periodicals or pamphlets either solely informational or of an advertising nature but only if the value of said material is less than \$500.
- (c) *Prohibitions.* Public officers and employees shall neither solicit nor demand any gift. It is also unlawful for any person or entity to offer, give or agree to give to any public officer or employee, to accept or agree to accept from another person or entity, any gift for or because of:
- (1) An official public action taken, or to be taken, or which could be taken, or an omission or failure to take a public action;
 - (2) A legal duty performed or to be performed, or which could be performed, or an omission or failure to perform a legal duty;
 - (3) A legal duty violated or to be violated, or which could be violated by any public officer or employee; or
 - (4) Attendance or absence from a public meeting at which official action is to be taken.

Sec. 2-153. Exploitation of official position prohibited.

No advisory personnel, autonomous personnel, candidate, commissioner, departmental personnel, employees, officers or quasi-judicial personnel shall use or attempt to use an official

position to secure special privileges or exemptions for that person or others except as may be specifically permitted by other ordinances and resolutions previously adopted or hereafter adopted by the Town Commission.

Sec. 2-154. Certain appearances and payment prohibited.

(a) No commissioner, officer, departmental personnel or the business entity by which they are employed, or employee shall appear before any Town board and make a presentation on behalf of a third person with respect to any matter, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall the person receive any compensation or gift, directly or indirectly, for services rendered to a third person, who has applied for or is seeking some benefit from the Town, in connection with the particular benefit sought by the third person. Nor shall the person appear in any court or before any administrative tribunal as counsel or legal advisor to a party who seeks legal relief from the Town through the suit in question.

(b) No advisory personnel, autonomous personnel, officer or quasijudicial personnel shall appear before the Town Commission, either directly or through an associate, and make a presentation on behalf of a third person with respect to any matter, license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Nor shall such person receive any compensation or gift, directly or indirectly, for services rendered to a third party that has applied for or is seeking some benefit from the Town Commission in connection with the particular benefit sought by the third party. Nor shall the

person appear in any court or before any administrative tribunal as counsel or legal advisor to a third party who seeks legal relief from the Town Commission through the suit in question.

(c) No advisory personnel, autonomous personnel, officer or quasijudicial personnel, after deliberating, considering, ruling or recommending on an application filed with the board or committee upon which they serve, shall appear before a higher board or the Town Commission to testify as an affected party.

Sec. 2-155. General Policy Employees.

(a) One (1) objective of the Town is to establish and administer a system of personnel management consistent with the goal of providing superior service to the community by employing and retaining individuals of the highest caliber as demonstrated by work performance and job behavior.

(b) Employees of the Town represent the Town in all of their dealings with the public. Their appearance, attitude, and behavior all announce to our customers, the taxpayers, what may be expected from the Town's government. For these reasons, we stress the importance of a good public image and courteous behavior as minimum standards for Town employees.

(c) It is the policy of the Town to expect from its employees compliance with all personnel rules and regulations, applicable state statutes and federal regulations, in the performance of duties, as well as compliance with all safety rules and standards.

(d) The Town advocates the concept that the quality of public service can attain maximum efficiency and effectiveness through a personnel management system based on merit principles.

(e) The foregoing provisions relating to Town employees shall also be applicable to officers.

Sec. 2-156. Conflict Of Interest.

To avoid misunderstandings and conflict of interests, which could arise, the following policy will be adhered to by employees and officers of the Town. This policy is in accordance with F.S. § 112.311 et seq., Code of Ethics for Public Officers and Employees.

(1) Employees and officers shall not accept any gifts, favors, or services that may reasonably tend to improperly influence them in the discharge of their official duties;

(2) Employees and officers shall not use or attempt to use their position to secure special privileges or exemptions for themselves or others;

(3) Employees and officers shall not accept employment or engage in any business or professional activity, which they may reasonably expect, would require or induce them to disclose confidential information acquired by them by reason of their official position;

(4) Employees and officers shall not disclose confidential information gained by reason of their official position, nor shall they otherwise use such information for their personal gain or benefit;

(5) Employees and officers shall not have personal investment in any enterprise, which will create a conflict between their private interest and the public interest;

(6) Employees and officers shall disclose to the Town Clerk, upon a form created by the Town Clerk, any direct or indirect interest in any for profit business relationship and any interest in real property which the employees and officers hold with any other employee or officer.;

(7) In addition to the foregoing, Town Commissioners shall disclose to the Town Clerk, upon a form created by the Town Clerk, any direct or indirect interest in non-homesteaded real property located within the Town within thirty (30) days upon purchasing said property. (Upon the passage of this ordinance, the Town Commissioners shall have thirty (30) days from the effective date, to file disclosure.) Thereafter, the Town Commissioners will be required to file the real property disclosure in accordance with this sub-paragraph (7) on a yearly basis along with his/her Form 1. However, if for any reason the Town Clerk does not receive same, s/he shall, in writing and via certified mail, request such official who has failed to file the required disclosure to do so. Thereafter, failure to make this filing, within ten (10) days from receipt of the Clerk's notice, shall result in the same penalties as failure to file a Form 1 disclosure as required by the County and State.

Sec. 2-157. Town Attorney To Render Opinions On Request.

Whenever any advisory personnel, autonomous personnel, candidate, commissioner, departmental personnel, employee, officer or quasi-judicial personnel is in doubt as to the proper interpretation or application of this conflict of interest and code of ethics article, or whenever any

person who renders services to the Town is in doubt as to the applicability of the article, that person may submit to the Town Attorney a full written statement of the facts and questions. The Town Attorney shall then render an advisory nonbinding opinion to such person and shall publish these opinions without use of the name of the person advised unless the person permits the use of a name. Binding opinions may be sought from the county ethics commission. The Town Clerk shall publish these opinions on the Town's website.

Sec. 2-158. Lobbying.

This section shall be applicable to all lobbyists as defined below, and shall also constitute a standard of conduct and behavior for all lobbyists. The provisions of this section shall be applied in a cumulative manner.

(1) Definitions. For purposes of this section, the following words, terms and phrases shall have the meanings as indicated below:

- a. TOWN PERSONNEL — Those Town officers and employees specified to include the Mayor and Town Commissioners, Town board or Town committee members, and all Town employees.
- b. LOBBYIST — All persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) any ordinance, resolution, action or decision of the Town Commission; (2) any action, decision, recommendation of a Town board or committee; or (3) any action, decision or recommendation of Town personnel during the time

period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the Town Commission, or a Town board or committee. "Lobbyist" specifically includes the principal, as defined in this section, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee. The term "lobbyist" specifically excludes any person who only appears as a representative of a not-for-profit corporation or entity (such as charitable organization, a trade association or trade union), without special compensation or reimbursement for the appearance, whether direct, indirect, or contingent, to express support or opposition to any item or attorneys who represent a client in relation to any quasi-judicial matter.

c. PRINCIPAL — All persons, firms, or corporations who employ a lobbyist.

(2) Lobbyist registration, fees, renewal and withdrawal.

a. All lobbyists shall register with the Town Clerk before engaging in any lobbying activities in the Town. Every person required to register as a lobbyist shall:

i. Register as a lobbyist

1. Complete the annual lobbyist registration form, as prepared by the Town Clerk, stating under oath his or her name, business

address, and the name and business address of each person or entity which has employed the registrant to lobby. If the lobbyist represents a corporation, it shall also be identified.

2. Without limiting the foregoing, the lobbyist shall also identify all persons holding, directly or indirectly, a five-percent or more ownership interest in the corporation, partnership, or trust.

ii. Pay an annual lobbyist registration fee of \$250.

iii. Register and disclose terms for each principal represented.

1. Complete the annual principal registration form, as prepared by the Town Clerk, prior to conducting any lobbying for each principal (client) being lobbied. Such application shall include a requirement that the lobbyist state under oath his or her name, business address, the name and business address of each person or entity by which s/he has been employed to lobby, as well as a letter of permission signed by the person, entity, principal or the principal's representative, stating that the lobbyist is authorized to represent him/her/it, together with a disclosure of whether any bonuses, success fees, or other consideration shall be received for such lobbying activities.

2. Pay an annual principal registration fee of \$100.
3. However, if multiple lobbyists from the same firm represent the same principal, only one registration and applicable fee are required to be filed for that principal. Any lobbyist from the same firm may submit the necessary documents.

iv. File a lobbyist expenditure report.

1. By January 15 of each year, all lobbyists shall submit to the Town Clerk a signed statement under oath listing all lobbying expenditures for the preceding calendar year. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events, and Town personnel on whose behalf or benefit the expenditure was made. A statement shall be filed even if there have been no expenditures during the reporting period. Annual statements shall be required until such time as the lobbyist files a notice of withdrawal of lobbying activities with the Town Clerk.
2. The Town Clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties

which may be imposed, a fine of \$50 per day shall be assessed for reports filed after the due date. Any lobbyist who fails to file the required expenditure report by January 15 shall be automatically suspended from lobbying until all fines are paid, unless the fine has been appealed.

3. A lobbyist or principal may appeal a fine and may request a hearing before the Town Commission. A request for hearing on the fine must be filed with the Town Clerk within 15 calendar days of receipt of the notification of the failure to file the required disclosure form.

v. File a notice of withdrawal. Each person who withdraws as a lobbyist for a particular principal (client) shall file an appropriate notice of withdrawal.

b. All lobbyist and principal registration forms, expenditure reports, notices of withdrawal, and applicable fees shall be submitted to the Town Clerk.

(3) Expiration of lobbyist and principal registrations. All lobbyist and principal registrations expire December 31 of each year.

(4) Processing of registration fees. The registration fees required by this section shall be deposited by the Town Clerk into a separate account and shall be expended for the purpose of recording, transcribing, administration and other costs incurred in maintaining

these records for availability to the public. Unexpended funds may be transferred to general revenue at the end of the fiscal year. There shall be no fee required for filing a notice of withdrawal, and the Town Commission may, in its discretion, waive the lobbyist and/or principal registration fee upon a finding of financial hardship.

(5) Change in lobbyist information. Any change to the information originally filed pursuant to this section shall require that the lobbyist file, within three business days from such changed circumstances, a signed statement under oath amending the above-referenced reports. Additionally, in the event official action on the specific lobbying issue is scheduled to occur during said three-day period, the lobbyist and principal shall, prior to said official action, further disclose the amendment by publicly stating on the record, at which the official action is to occur, the subject amendment. The lobbyist has a continuing duty to supply accurate information and amend said reports when so needed.

(6) Creation of a lobbyist log. The Town Clerk shall publish logs on a quarterly and an annual basis reflecting the lobbyist registrations which have been filed in accordance with this section. All logs required by this section shall be prepared in a manner substantially similar to the logs prepared for the Florida Legislature pursuant to § 11.045, Florida Statutes.

(7) Town Clerk to publish information. The Town Clerk shall publish to the Town Commission, Town appointed boards or committees, Town Manager and other personnel a list of registered lobbyists and their principals, for which they are authorized to lobby, and any other disclosure made to the Town Clerk that is required pursuant to state and

county law. The information shall be disseminated by the Town Clerk prior to Town Commission meetings and public hearings.

(8) Town sign-in sheet. Every lobbyist and principal of a local business shall sign in at the front desk each time he or she meets with Town personnel at a Town facility, or shall deliver a memorandum of said meeting to the Town Clerk within 24 hours of meeting with Town personnel at any other location, and shall inform the Town Clerk, in writing, of (1) the name of the lobbyist or the principal of the local business; (2) the Town personnel in attendance; (3) the time and place of the meeting; and (4) the issue discussed. The issue shall be described with as much detail as is practical, including but not limited to a specific description where applicable to a pending request for a proposal, invitation to bid, or public hearing item.

(9) Penalties for violation.

- a. The Town Clerk shall notify the Miami-Dade County Commission on Ethics and Public Trust of the failure of a lobbyist (or principal) to file either of the reports referenced above and/or pay the assessed fines after notification.
- b. A lobbyist (or principal) may appeal a fine and may request a hearing before the Miami-Dade Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Miami-Dade Commission on Ethics and Public Trust within 15 calendar days of receipt of the notification of the failure to file the required disclosure form. The Miami-Dade County

Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or in part, based on good cause shown.

- c. The Miami-Dade County Commission on Ethics and Public Trust shall investigate any person engaged in lobbying activities who may be in violation of this section. In the event that a violation is found to have been committed the Miami-Dade County Commission on Ethics and Public Trust may, in addition to the penalties set forth in this section, prohibit such person from lobbying before the Town Commission or any committee, board or personnel of the Town as provided herein.

- i. Every lobbyist who is found to be in violation of this section shall be prohibited from registering as a lobbyist or lobbying in accordance with the following schedule:

- 1. First violation: for a period of 90 days from the date of determination of violation.
 - 2. Second violation: for a period of one year from the date of determination of violation.
 - 3. Third violation: for a period of five years from the date of determination of violation.

ii. As used herein, a "direct violation" shall mean a violation committed by a lobbyist representing said bidder or proposer.

d. A contract entered into in violation of this section shall also render the contract voidable. The Town Manager shall include the provisions of this section in all Town bid documents, RFP, RFQ, and CDBG applications; provided, however, the failure to do so shall not render any contract entered into as the result of the failure illegal per se.

e. All members of the Town Commission, and all Town personnel, shall be diligent to ascertain whether persons required to register pursuant to this section have complied. Town Commission members or Town personnel may not knowingly permit a person who is not registered pursuant to this section to lobby the Town Commission members, or Town appointed committee or board or Town personnel.

(10) Lobbyist contingency fees prohibited. No person may, in whole or in part, receive or agree to receive a contingency fee. As used herein, "contingency fee" means a fee, bonus, commission, or nonmonetary benefit as compensation which is dependent on or in any way contingent on the passage, defeat, or modification of: (1) an ordinance, resolution, action or decision of the Town Commission; (2) any action, decision or recommendation of the Town Manager or any Town appointed board or committee; or (3) any action, decision or recommendation of Town personnel during the time period of the entire decision-making process regarding such action, decision or recommendation

which foreseeably will be heard or reviewed by the Town Commission, or a Town appointed board or committee.

(11) Conflict provision. It is acknowledged that Section 2-11.1(s) of the Miami-Dade County Code is a minimum standard to govern lobbying activities. If there is any conflict between this section and the County Code, this section shall control.

Sec. 2-159. Relatives of Commissioners on Boards and Committees.

No relative of a Commissioner may serve on any Commission appointed board or committee. For the purposes of this section relative shall mean, the Commissioner's spouse, parent, children, step children, grandparent, aunt, uncle, niece, nephew, father-in-law, mother-in-law, brother-in-law, sister-in-law, first cousin, or grandchild. This section shall not apply to appointments made prior to the enactment of this ordinance.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 4. Inclusion in the Code. It is the intention of the Mayor and Town Commission of the Town of Surfside, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the Town of Surfside, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article", or other appropriate word.

Section 5. Conflicts. Any and all Ordinances and Resolutions or parts of Ordinances or Resolutions in conflict herewith are hereby repealed.

Section 6. Effective Date. This ordinance shall become effective in ten (10) days after second reading.

PASSED and ADOPTED on First Reading the 13th day of March, 2007.

PASSED and ADOPTED on Second Reading this 10th day of April, 2007.

Charles W. Burkett, Mayor

Attest:

Beatris M. Arguelles
Beatris M. Arguelles, CMC
Town Clerk

Approved As to Form and Legal Sufficiency:

Lynn M. Dannheisser
Lynn M. Dannheisser, Town Attorney

Moved by: Commissioner Imberman

Second by: Commissioner Levine

Vote:

Mayor Burkett	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Vice Mayor Weinberg	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Blumstein	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Imberman	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>
Commissioner Levine	yes <input checked="" type="checkbox"/>	no <input type="checkbox"/>